

ORIGINAL

1 Iman Lordgooei (State Bar No. 251320)
JONES DAY
2 1755 Embarcadero Road
Palo Alto, CA 94303
3 Telephone: (650) 739-3939
Facsimile: (650) 739-3900
4 Email: ilordgooei@jonesday.com

5 Calvin P. Griffith (to be admitted *pro hac vice*)
cpgriffith@jonesday.com
6 David M. Maiorana (to be admitted *pro hac vice*)
dmaiorana@jonesday.com
7 Sheryl H. Love (to be admitted *pro hac vice*)
shlove@jonesday.com
8 JONES DAY
North Point
9 901 Lakeside Avenue
Cleveland, Ohio 44114
10 Telephone: (216) 586-3939
Facsimile: (216) 579-0212

11 *Attorneys for Plaintiff*

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

EDL

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16
17 VASONOVA, INC.,

18 Plaintiff,

19 v.

20 SORIN GRUNWALD, ROMEDEX
INTERNATIONAL SRL, and BARD
21 ACCESS SYSTEMS, INC.,

22 Defendants.

CV 12 2422

Case No. _____

COMPLAINT AND
DEMAND FOR JURY TRIAL

23
24 Plaintiff, VasoNova, Inc. ("VasoNova"), for its claims against Defendants Sorin
25 Grunwald ("Grunwald"), Romedex International SRL ("Romedex"), and Bard Access Systems,
26 Inc. ("Bard") (collectively, "Defendants"), hereby states and alleges the following:
27
28

COMPLAINT AND
DEMAND FOR JURY TRIAL

1 Alcea Vatra, Bucharest, Romania.

2 **JURISDICTION AND VENUE**

3 7. This Court has personal jurisdiction over Grunwald because of his substantial
4 contacts with this District. Much of Grunwald's conduct that forms the basis for this action
5 occurred in this District. Grunwald resided and was employed in this District during a substantial
6 portion of the period in which he committed the acts complained of herein.

7 8. This Court has personal jurisdiction over Romedex by virtue of its founder
8 Grunwald's substantial contacts within this District. Prior to founding Romedex, Grunwald
9 committed the acts complained of herein in this District, then incorporated Romedex to continue
10 and facilitate his wrongful conduct. Romedex wrongfully acquired and used intellectual property
11 created in this District and subject to a contract between VasoNova and Grunwald governed by
12 California law.

13 9. This Court has personal jurisdiction over Bard by virtue of its substantial contacts
14 with this District. On information and belief, Bard has transacted business in this District
15 sufficient for this Court to have general jurisdiction over Bard.

16 10. The Court has subject matter jurisdiction over the claims asserted in this
17 Complaint pursuant to 28 U.S.C. §§ 1332(1), (2) and/or (3) because VasoNova is not a citizen of
18 the same state as Bard, VasoNova is not a citizen of the same country as Romedex and Grunwald,
19 and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

20 11. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2).

21 **INTRADISTRICT ASSIGNMENT**

22 12. This action arises in San Mateo County, California. Pursuant to Civil L.R. 3-2(e)
23 and General Order No. 44, this action is to be assigned to the San Francisco Division or the
24 Oakland Division.

25 **FACTUAL BACKGROUND**

26 13. VasoNova began as a small start-up company working hard to develop and
27 commercialize a system for guiding the placement of catheters, including peripherally inserted
28 coronary catheters or PICCs. A PICC is a catheter inserted in, for example, a vein in the arm and

1 moved through the circulatory system to the heart, for example, to the caval-atrial junction just
2 outside the right atrium of the heart, in order to administer medication. Typically, such a catheter
3 is inserted blindly, by a clinician or specially trained nurse, and then the position of the tip of the
4 catheter is verified by X-ray. If the tip of the catheter is out of position, the clinician or nurse
5 adjusts it and a second X-ray is taken. This process is cumbersome, time-consuming and costly,
6 particularly when multiple X-rays are needed.

7 14. VasoNova saw an opportunity to streamline this process and improve patient care
8 by developing a system to locate the tip of the catheter. VasoNova's goal was to introduce a
9 product that would make X-ray verification unnecessary.

10 15. As the fledgling VasoNova attracted outside investment and formalized its internal
11 operations, it entered into confidentiality agreements with its employees. As VasoNova's Chief
12 Technology Officer, Grunwald signed a Confidential Information, Invention Assignment, and
13 Arbitration Agreement (the "Confidentiality Agreement") on March 20, 2007.

14 16. The Confidentiality Agreement required Grunwald to maintain "Company
15 Confidential Information" in confidence during the term of his employment and thereafter.
16 "Company Confidential Information" is defined as:

17 "Company Confidential Information" means any nonpublic
18 information that relates to the actual or anticipated business,
19 research or development of the Company, or to the Company's
20 technical data, trade secrets or know-how, including, but not limited
21 to, research, product plans or other information regarding the
22 Company's products or services and markets therefor, customer
23 lists and customers (including, but not limited to, customers of the
24 Company on which I called or with which I may become
25 acquainted during the term of my employment), software,
26 developments, inventions, processes, formulas, technology, designs,
27 drawings, engineering, hardware configuration information,
28 marketing, finances and other business information; provided,
however Company Confidential Information does not include any
of the foregoing items to the extent the same have become publicly
known and made generally available through no wrongful act of
mine or of others.

17 17. The Confidentiality Agreement also addressed intellectual property created by
18 Grunwald during his employment. Specifically, it provides:

19 I agree that I will promptly make full written disclosure to the
20 Company, will hold in trust for the sole right and benefit of the

1 Company, and hereby assign to the Company, or its designee, all
2 my right, title, and interest in and to any and all inventions, original
3 works of authorship, developments, concepts, improvements,
4 designs, discoveries, ideas, trademarks or trade secrets, whether or
5 not patentable or registrable under patent, copyright or similar laws,
6 which I may solely or jointly conceive or develop or reduce to
7 practice, or cause to be conceived or developed or reduced to
8 practice, during the period of time I am in the employ of the
9 Company (including during my off-duty hours), or with the use of
10 Company's equipment, supplies, facilities, or Company
11 Confidential Information, except as provided in Section 2.E below
12 (collectively referred to as "Inventions").

13 18. Thus, the Confidentiality Agreement effected an assignment to VasoNova of all
14 inventions made, developed, conceived or reduced to practice during Grunwald's employment.

15 19. The Confidentiality Agreement also prohibited Grunwald from engaging in
16 business in competition with VasoNova while employed at VasoNova.

17 20. VasoNova's VPS (Vascular Positioning System) product uses both internal ECG
18 and Doppler sonogram signals to locate the tip of a venous catheter as it is inserted, *e.g.*, in the
19 arm, and moved through the circulatory system to the optimal location for administration of
20 medication, *e.g.*, the caval-atrial junction just outside the right atrium of the heart. As
21 VasoNova's Chief Technology Officer, Grunwald was intimately involved in every aspect of the
22 development of VasoNova's VPS (Vascular Positioning System) product, including the invention
23 of patentable technologies, hardware design, software design and algorithms, clinical testing,
24 market research, and FDA clearance.

25 21. After VasoNova completed its second round of financing, Grunwald unexpectedly
26 announced his resignation. On January 15, 2009, Grunwald signed a Separation Agreement and
27 Release with VasoNova in which he "reaffirms and agrees to abide by the terms of the
28 Confidentiality Agreement."

Both the Confidentiality Agreement and the Separation Agreement are governed
by California law. Both also contain arbitration clauses.

23. Grunwald's last day of employment with VasoNova was February 3, 2009.

GRUNWALD'S MISCONDUCT

24. While at VasoNova, Grunwald worked on developing both the hardware and

1 software aspects of VasoNova's VPS product; participated in clinical studies; worked with
2 confidential market research sponsored and paid for by VasoNova; assisted in formulating and
3 executing VasoNova's strategy regarding developing, patenting and commercializing technology
4 relating to VPS; and worked on obtaining 510(k) market clearance from the Food and Drug
5 Administration for VPS. He had access to, and in some cases generated, VasoNova's most
6 confidential and valuable Company Confidential Information and intellectual property.

7 25. Upon information and belief, during his employment with VasoNova, at least as
8 early as September 2008, Grunwald conceived of an alternative method of locating the position of
9 the tip of a venous catheter using only ECG signals. Grunwald ultimately called his product
10 Sapiens TLS. As used herein, "Sapiens TLS" refers to all research, development, inventions,
11 ideas and other information relating to and leading to the product ultimately known as Sapiens
12 TLS.

13 26. In breach of his Confidentiality Agreement with VasoNova, Grunwald did not
14 disclose Sapiens TLS to VasoNova. Instead, Grunwald decided to take this technology and
15 develop it for his own benefit. Because Sapiens TLS is in direct competition with VasoNova's
16 VPS product, Grunwald knew that he could take advantage of VasoNova's Company
17 Confidential Information to shorten the time to develop and commercialize Sapiens TLS.

18 27. Beginning at least as early as September 2008, Grunwald used VasoNova's
19 Company Confidential Information in developing and commercializing Sapiens TLS. In order to
20 hide his activities from VasoNova, Grunwald used a company he had previously formed called
21 Dykonex Europe or Dykonex Sarl.

22 28. VasoNova was aware of the existence of Dykonex, but Grunwald had represented
23 to VasoNova that Dykonex was merely a distributor of non-competitive products in which
24 Grunwald had no day-to-day involvement. To obscure his activities, Grunwald deceived
25 VasoNova about his activities with Dykonex.

26 29. Upon information and belief, in November 2008, Grunwald conducted
27 electromagnetic compatibility tests on a prototype of Sapiens TLS at the Bay Area Compliance
28 Laboratories Corp. Grunwald did not tell VasoNova about the existence of the Sapiens prototype

1 or the testing. Also upon information and belief, in November 2008, Grunwald demonstrated
2 Sapiens TLS to Dr. Philippe Montravers and his team at Bichat Hospital in Paris, France.
3 Grunwald still did not disclose the product or his activities to VasoNova.

4 30. The Gavacelt Congress, a vascular medicine conference, was held in Rome, Italy
5 on December 3-5, 2008. Grunwald attended as VasoNova's CTO and at VasoNova's expense, in
6 order to further VasoNova's business. Instead, Grunwald pursued his own agenda to VasoNova's
7 detriment.

8 31. Unknown to VasoNova, instead of demonstrating and generating interest in
9 VasoNova's product, Grunwald demonstrated Sapiens TLS to various physicians at the Gavacelt
10 conference. In addition, Grunwald demonstrated Sapiens TLS to VasoNova's competition.
11 Among the competitors whom Grunwald sought to interest in Sapiens was Medical Components,
12 Inc. ("MedComp").

13 32. On December 6, 2008, while still in Italy purportedly on VasoNova's behalf,
14 Grunwald conducted a clinical study of Sapiens TLS at Catholic University Hospital in Rome
15 instead of devoting his time to VasoNova's business.

16 33. Dr. Mauro Pittiruti, whom VasoNova had previously identified as a potential
17 collaborator, was Grunwald's principal investigator in the study of Sapiens and assisted Grunwald
18 by developing the protocol that was used. Grunwald hid his Sapiens-related activities from
19 VasoNova.

20 34. On January 6, 2009, Grunwald unexpectedly notified VasoNova that he would be
21 resigning as Chief Technology Officer. After taking vacation time and unpaid leave, his last day
22 of employment was February 3, 2009. Grunwald told VasoNova that he would be "pursuing a
23 teaching opportunity in Paris, France," but concealed that he intended to pursue his competing
24 business, which he had begun while at VasoNova, using VasoNova's Company Confidential
25 Information and intellectual property.

26 35. Beginning even before his resignation, Grunwald negotiated with MedComp
27 regarding Grunwald assisting MedComp in developing products that would directly compete with
28 VasoNova's products. The relationship between Grunwald and MedComp lasted until sometime

1 in the summer of 2009. Upon information and belief, Grunwald disclosed and/or used
2 VasoNova's Company Confidential Information in working with MedComp.

3 36. Beginning February 3, 2009 or even earlier, Grunwald worked with MedComp to
4 design and test competitive products.

5 37. On June 12, 2009, Grunwald filed a first provisional patent application on Sapiens
6 TLS technology that he developed while still employed by VasoNova. He filed subsequent
7 provisional patent applications on Sapiens TLS technology in August 2009, February 2010, and
8 September 2010.

9 38. On June 14, 2010, Grunwald filed a non-provisional patent application claiming
10 priority to the June 2009 provisional application. That application was published by the USPTO
11 on December 16, 2010, with publication number 2010/0317981 A1.

12 39. On August 10, 2010, Grunwald filed a non-provisional patent application claiming
13 priority to both the June 2009 and August 2009 provisional applications, and as a continuation-in-
14 part of the June 2010 non-provisional application. That application was published by the USPTO
15 on December 16, 2010, with publication number 2010/0318026 A1.

16 40. On February 2, 2011, Bard filed a non-provisional patent application claiming
17 priority to both the June 2009 and February 2010 provisional applications, and as a continuation-
18 in-part of the August 2010 non-provisional application. The February 2, 2011 application was
19 published by the USPTO on August 11, 2011, with publication number 2011/0196248 A1.

20 41. On September 22, 2011 Bard filed a non-provisional patent application claiming
21 priority to all four of the June 2009, August 2009, February 2010, and September 2010
22 provisional applications, and as a continuation-in-part of the February 2, 2011 non-provisional
23 application. The February 2, 2011 application was published by the USPTO on March 8, 2012,
24 with publication number 2012/0059270 A1.

25 42. The foregoing patent applications are collectively referred to herein as the
26 "Grunwald Patent Applications."

27 43. Grunwald did not disclose these inventions to VasoNova or prepare assignments to
28 VasoNova of the Grunwald Patent Applications. Instead, in May 2009, Grunwald incorporated a

1 new company, Romedex, to commercialize the Sapiens TLS product that he had taken from
2 VasoNova. He subsequently purported to assign the Grunwald Patent Applications on Sapiens
3 TLS technology to Romedex.

4 44. Grunwald and Romedex subsequently obtained 510(k) clearance from the U.S.
5 Food and Drug Administration to market Sapiens TLS, using clinical trial information generated
6 while Grunwald was still employed at VasoNova.

7 45. Grunwald used VasoNova's inventions, ideas and Company Confidential
8 Information to further develop the Sapiens TLS technology and business.

9 46. On September 23, 2010, MedComp sued Grunwald for breach of contract, breach
10 of fiduciary duty, misappropriation of trade secrets and conversion, alleging that Grunwald's
11 Sapiens TLS product belonged to MedComp.

12 47. On October 25, 2010, Grunwald answered MedComp's complaint and alleged that
13 the Sapiens TLS product was conceived and developed *before* Grunwald's involvement with
14 MedComp – *i.e.*, while he was still employed by VasoNova. MedComp and Grunwald settled the
15 lawsuit in November 2010.

16 48. In late 2010, Grunwald sold Sapiens TLS to Bard, another competitor of
17 VasoNova, for an undisclosed sum.

18 49. On information and belief, Romedex, through Grunwald, purported to assign the
19 Grunwald Patent Applications to Bard on December 7, 2010.

20 **THE ARBITRATION**

21 50. The arbitration clause in the Confidentiality Agreement requires VasoNova to
22 resolve its disputes with Grunwald by bringing an arbitration against Grunwald in California,
23 which arbitration is to be governed by the arbitration rules set forth in California Code of Civil
24 Procedure Sections 1280 through 1294.2.

25 51. On April 14, 2011, VasoNova commenced an arbitration against Grunwald in
26 California (hereinafter the "Arbitration"). The parties engaged in discovery throughout 2011 and
27 early 2012.

28 52. On April 20, 2012, more than one year into the Arbitration, Grunwald filed a

1 motion for leave to amend his answer in the Arbitration to assert a new defense of failure to name
 2 an indispensable party. In the April 20, 2012 motion, Grunwald claimed for the first time that
 3 both Bard and Romedex were indispensable parties to the Arbitration.

4 53. Neither Bard nor Romedex is a party to the Confidentiality Agreement or
 5 Separation Agreement, including either Agreement's arbitration provisions.

6 54. According to Grunwald, VasoNova's claims implicate third-party defendants not
 7 subject to the arbitration agreements. Joinder of Grunwald, Romedex and Bard in this action is
 8 necessary to protect the parties from potentially conflicting, piecemeal resolutions in multiple
 9 forums.

10 55. Pursuant to California Code Civ. Pro. § 1281.2(c), which is among the code
 11 sections that governs the resolution of disputes between VasoNova and Grunwald pursuant to the
 12 Confidentiality Agreement, VasoNova is entitled to bring this action.

13 **COUNT I – BREACH OF CONTRACT**

14 56. VasoNova incorporates paragraphs 1-55 as though fully set forth herein.

15 57. Grunwald violated the Confidentiality Agreement by competing with VasoNova
 16 during his employment by beginning development and commercialization of a competing product,
 17 Sapiens TLS.

18 58. Grunwald further violated the Confidentiality Agreement by failing to disclose to
 19 VasoNova ideas and inventions relating to Sapiens TLS during his employment.

20 59. Grunwald, both individually and through Romedex, further violated the
 21 Confidentiality Agreement by using VasoNova's Company Confidential Information on his own
 22 behalf and on behalf of others during and after his employment.

23 60. As the result of the foregoing breaches of contract, VasoNova has suffered
 24 damages in an amount greater than \$75,000, the actual amount to be proven at trial.

25 **COUNT II – BREACH OF FIDUCIARY DUTY**

26 61. VasoNova incorporates paragraphs 1-60 as though fully set forth herein.

27 62. As an officer of VasoNova, Grunwald owed a fiduciary duty to VasoNova.

28 63. As described above, Grunwald, both individually and through Romedex, breached

1 his fiduciary duty to VasoNova, including by acting contrary to VasoNova's best interest,
 2 usurping corporate opportunities for his own gain, failing to disclose Company Confidential
 3 Information and inventions developed during his employment to VasoNova, and by using and
 4 disclosing Company Confidential Information for his own gain while an officer of VasoNova.

5 64. As the result of Grunwald's breaches of fiduciary duty, VasoNova has suffered
 6 damages in an amount greater than \$75,000, the actual amount to be proven at trial.

7 **COUNT III – FRAUD**

8 65. VasoNova incorporates paragraphs 1-64 as though fully set forth herein.

9 66. Grunwald had, and continues to have, contractual and fiduciary duties to disclose
 10 material information to VasoNova, including the Sapiens TLS technology and his competitive
 11 activities.

12 67. Grunwald failed to disclose material information to VasoNova.

13 68. Grunwald misrepresented his activities and intentions to VasoNova.

14 69. Grunwald intended for VasoNova to believe his deceptions and to rely on his
 15 material omissions.

16 70. VasoNova relied upon Grunwald's material omissions and misrepresentations to
 17 its detriment, at a minimum by continuing to pay Grunwald while he deceived and competed with
 18 VasoNova.

19 71. VasoNova is entitled to compensatory damages in an amount greater than \$75,000,
 20 the actual amount to be proven at trial.

21 72. Because Grunwald's conduct as alleged herein and to be proven at the trial was
 22 willful and malicious, VasoNova is further entitled to punitive damages.

23 **COUNT IV – TORTIOUS INTERFERENCE WITH CONTRACT**

24 73. VasoNova incorporates paragraphs 1-72 as though fully set forth herein.

25 74. VasoNova and Grunwald are parties to the Confidentiality Agreement.

26 75. Grunwald, both individually and through Romedex, purported to sell to Bard,
 27 VasoNova's confidential and proprietary information, including the Grunwald Patent
 28 Applications and the FDA 510(k) approval for Sapiens TLS.

76. On information and belief, Romedex and Bard knew or should have known that Grunwald was contractually obligated to maintain VasoNova's Company Confidential Information in confidence during the term of his employment and thereafter, and therefore that Grunwald had no authority to disclose to Romedex and Bard VasoNova's confidential and proprietary information, including the Grunwald Patent Applications and the FDA 510(k) approval.

77. On information and belief, Romedex and Bard knew or should have known that Grunwald's Confidentiality Agreement included an assignment to VasoNova of all ideas and inventions made, developed or conceived during Grunwald's employment at VasoNova, and therefore Grunwald had no authority or ability to sell and/or assign VasoNova's confidential and proprietary information, including the Grunwald Patent Applications and the FDA 510(k) approval.

78. Romedex and Bard tortiously interfered with VasoNova's contract with Grunwald, causing VasoNova to be injured and to lose money and property.

79. VasoNova is entitled to compensatory damages from Grunwald, Romedex, and Bard in an amount greater than \$75,000, the actual amount to be proven at trial.

COUNT VI – UNJUST ENRICHMENT

80. VasoNova incorporates paragraphs 1-79 as though fully set forth herein.

81. Grunwald, Romedex and Bard have been unjustly enriched by their use and enjoyment of VasoNova's confidential and proprietary information, including the Grunwald Patent Applications and FDA 510(k) approval.

82. VasoNova is entitled to damages from Grunwald, Romedex, and Bard for their unjust enrichment in an amount greater than \$75,000, the actual amount to be proven at trial.

COUNT VI – UNFAIR COMPETITION UNDER
CAL. BUS. & PROF. CODE § 17200 ET SEQ.

83. VasoNova incorporates paragraphs 1-82 as though fully set forth herein.

84. The activities of Grunwald, Romedex and Bard alleged herein constitute unlawful, unfair and fraudulent practices in violation of the Unfair Competition Law, §§ 17200 *et seq.* of

1 the California Business & Profession Code.

2 85. VasoNova has been injured and has lost money and property as the result of the
3 Defendants' unfair competition.

4 86. The Defendants have profited from their unlawful and unfair business practices.

5 87. VasoNova is entitled to damages from Defendants' unfair competition in an
6 amount greater than \$75,000, the actual amount to be proven at trial.

7 **COUNT VII – QUIET TITLE**

8 88. VasoNova incorporates paragraphs 1-87 as though fully set forth herein.

9 89. VasoNova is the true titleholder to the Grunwald Patent Applications and other
10 ideas and assets relating to Sapiens TLS, by virtue of the assignment clause in the Confidentiality
11 Agreement.

12 90. Grunwald breached the Confidentiality Agreement by failing to execute
13 documents to memorialize his assignment of the Sapiens TLS inventions contained in the
14 Grunwald Patent Applications to VasoNova so that the assignments could be recorded with the
15 USPTO, and by purporting to assign the Sapiens TLS technology to Romedex and Bard.

16 91. Grunwald falsely claimed title to the Sapiens TLS inventions in the Grunwald
17 Patent Applications and wrongfully signed fraudulent assignments of those applications first to
18 Romedex and then to Bard with the result that the records of the USPTO now inaccurately show
19 Bard as the purported owner of the Grunwald Patent Applications.

20 92. Grunwald has a continuing duty under the Confidentiality Agreement to provide
21 VasoNova with clear title to the Sapiens TLS inventions, including the Grunwald Patent
22 Applications, which he will not fulfill unless enjoined by the Court to do so.

23 93. VasoNova is entitled to and seeks a declaration that it is the true owner of the
24 Sapiens TLS technology invented by Grunwald, including the Grunwald Patent Applications.

25 94. Absent injunctive relief, VasoNova will be irreparably harmed by Grunwald's,
26 Romedex's, and Bard's failure to execute and deliver documents evidencing the assignment to
27 VasoNova for recordation at the USPTO.

28 95. VasoNova is entitled to and seeks an injunction requiring Grunwald, Romedex and

1 Bard each to provide all reasonable assistance and sign all appropriate documents to confirm
2 VasoNova's title and to correct the records of the USPTO.

3 96. VasoNova has no adequate remedy at law.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, VasoNova prays that the Court:

6 A. Award VasoNova money damages in an amount sufficient to compensate
7 VasoNova for Grunwald's breach of contract, breach of fiduciary duty, fraud, unfair competition
8 and unjust enrichment;

9 B. Award VasoNova money damages in an amount sufficient to compensate
10 VasoNova for Romedex's and Bard's tortious interference with contract, unfair competition and
11 unjust enrichment.

12 C. Quiet title in the Grunwald Patent Applications, and declare that VasoNova is the
13 owner of the Grunwald Patent Applications;

14 D. Issue an injunction prohibiting each of Grunwald, Romedex and Bard from using
15 VasoNova's Company Confidential Information;

16 E. Issue an injunction requiring each of Grunwald, Romedex and Bard to provide all
17 reasonable assistance and execute all documents necessary to confirm title to the Grunwald Patent
18 Applications in VasoNova to correct the records of the USPTO;

19 F. Award VasoNova punitive damages;

20 G. Declare that VasoNova is the prevailing party in this case and award VasoNova its
21 attorneys' fees and expenses;

22 H. Award VasoNova any and all other relief that the Court finds to be just and proper.
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JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, VasoNova demands a trial by jury of all issues triable of right by jury.

Dated: May 11, 2012

JONES DAY

By: 

Iman Lordgooei

Attorneys for Plaintiff